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# A BILL FOR AN ACT

RELATING TO THE UNIFORM POWER OF ATTORNEY ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 UNIFORM POWER OF ATTORNEY ACT

6 PART I. GENERAL PROVISIONS

7 § -1 Definitions. For the purposes of this chapter,  
8 unless the context clearly indicates otherwise:

9 "Agent" means a person granted authority to act for a  
10 principal under a power of attorney, whether denominated an  
11 agent, attorney-in-fact, or otherwise. The term includes an  
12 original agent, co-agent, successor agent, and a person to which  
13 an agent's authority is delegated.

14 "Durable" means not terminated by the principal's  
15 incapacity, with respect to a power of attorney.

16 "Electronic" means relating to technology having  
17 electrical, digital, magnetic, wireless, optical,  
18 electromagnetic, or similar capabilities.



1 "Good faith" means honesty in fact.

2 "Incapacitated" or "incapacity" means the inability of an  
3 individual to manage property or business affairs because the  
4 individual:

5 (1) Has an impairment in the ability to receive and  
6 evaluate information or make or communicate decisions  
7 even with the use of technological assistance; or

8 (2) Is:

9 (A) Missing;

10 (B) Detained, including incarcerated in a penal  
11 system; or

12 (C) Outside of the United States and unable to  
13 return.

14 "Person" means an individual, corporation, business trust,  
15 estate, trust, partnership, limited liability company,  
16 association, joint venture, public corporation, government or  
17 governmental subdivision, agency, or instrumentality, or any  
18 other legal or commercial entity.

19 "Power of attorney" means a writing or other record that  
20 grants authority to an agent to act in the place of the  
21 principal, whether or not the term "power of attorney" is used.



1 "Presently exercisable general power of appointment" means  
2 the power exercisable at the time in question to vest absolute  
3 ownership in the principal individually, the principal's estate,  
4 the principal's creditors, or the creditors of the principal's  
5 estate, with respect to property or a property interest subject  
6 to a power of appointment. The term includes a power of  
7 appointment not exercisable until the occurrence of a specified  
8 event, the satisfaction of an ascertainable standard, or the  
9 passage of a specified period only after the occurrence of the  
10 specified event, the satisfaction of the ascertainable standard,  
11 or the passage of the specified period. The term does not  
12 include a power exercisable in a fiduciary capacity or only by  
13 will.

14 "Principal" means an individual who grants authority to an  
15 agent in a power of attorney.

16 "Property" means anything that may be the subject of  
17 ownership, whether real or personal, or legal or equitable, or  
18 any interest or right therein.

19 "Record" means information that is inscribed on a tangible  
20 medium or that is stored in an electronic or other medium and is  
21 retrievable in perceivable form.



1 "Sign" means, with present intent to authenticate or adopt  
2 a record, to:

- 3 (1) Execute or adopt a tangible symbol; or
- 4 (2) Attach to or logically associate with the record an  
5 electronic sound, symbol, or process.

6 "State" means a state of the United States, the District of  
7 Columbia, Puerto Rico, the United States Virgin Islands, or any  
8 territory or insular possession subject to the jurisdiction of  
9 the United States.

10 "Stocks and bonds" means stocks, bonds, mutual funds, and  
11 all other types of securities and financial instruments, whether  
12 held directly, indirectly, or in any other manner. The term  
13 does not include commodity futures contracts and call or put  
14 options on stocks or stock indexes.

15 § -2 **Applicability.** This chapter shall apply to all  
16 powers of attorney except:

- 17 (1) A power to the extent it is coupled with an interest  
18 in the subject of the power, including a power given  
19 to or for the benefit of a creditor in connection with  
20 a credit transaction;
- 21 (2) A power to make health care decisions;



- 1           (3) A power created by a legal parent or legal guardian  
2           placing the care of a minor or a disabled adult under  
3           another person;
- 4           (4) A proxy or other delegation to exercise voting rights  
5           or management rights with respect to an entity; and
- 6           (5) A power created on a form prescribed by a government  
7           or governmental subdivision, agency, or  
8           instrumentality for a governmental purpose.

9           § -3 Power of attorney. (a) A power of attorney  
10          created under this chapter shall be durable unless it expressly  
11          provides that it is terminated by the incapacity of the  
12          principal.

13               (b) A power of attorney shall be signed by the principal  
14          or in the principal's conscious presence by another individual  
15          directed by the principal to sign the principal's name on the  
16          power of attorney. A signature on a power of attorney is  
17          presumed to be genuine if the principal acknowledges the  
18          signature before a notary public or other individual authorized  
19          by law to take acknowledgments.

20               (c) A power of attorney executed in Hawaii on or after  
21          January 1, 2015, is valid if its execution complied with the law  
22          of this State as it existed at the time of execution.



1 (d) A power of attorney executed outside of Hawaii is  
2 valid in this State if, when the power of attorney was executed,  
3 the execution complied with:

4 (1) The law of the jurisdiction that determines the  
5 meaning and effect of the power of attorney pursuant  
6 to subsection (f); or

7 (2) The requirements for a military power of attorney  
8 pursuant to title 10 United States Code section 1044b,  
9 as amended.

10 (e) Except as otherwise provided by statute other than  
11 this chapter, a photocopy or electronically transmitted copy of  
12 an original power of attorney shall have the same effect as the  
13 original.

14 (f) The meaning and effect of a power of attorney is  
15 determined by the law of the jurisdiction indicated in the power  
16 of attorney and, in the absence of an indication of  
17 jurisdiction, by the law of the jurisdiction in which the power  
18 of attorney was executed.

19 § -4 **Nomination of conservator or guardian; relation of**  
20 **agent to court-appointed fiduciary.** (a) In a power of  
21 attorney, a principal may nominate a conservator or guardian of  
22 the principal's estate, or conservator or guardian of the



1 principal's person for consideration by the court if protective  
2 proceedings for the principal's estate or person are begun after  
3 the principal executes the power of attorney. Except for good  
4 cause shown or disqualification, the court shall make its  
5 appointment in accordance with the principal's most recent  
6 nomination.

7 (b) If, after a principal executes a power of attorney, a  
8 court appoints a guardian of the principal's estate or other  
9 fiduciary charged with the management of some or all of the  
10 principal's property, the agent shall be accountable to the  
11 fiduciary as well as to the principal. The power of attorney  
12 shall not be terminated and the agent's authority shall continue  
13 unless limited, suspended, or terminated by the court.

14 § -5 **Effective date of power of attorney.** (a) A power  
15 of attorney is effective when executed unless the principal  
16 provides in the power of attorney that it becomes effective at a  
17 future date or upon the occurrence of a future event or  
18 contingency.

19 (b) If a power of attorney becomes effective upon the  
20 occurrence of a future event or contingency, the principal, in  
21 the power of attorney, may authorize one or more persons to



1 determine in a writing or other record that the event or  
2 contingency has occurred.

3 (c) If a power of attorney becomes effective upon the  
4 principal's incapacity and the principal has not authorized a  
5 person to determine whether the principal is incapacitated, or  
6 the person authorized is unable or unwilling to make the  
7 determination, the power of attorney becomes effective upon a  
8 determination in a writing or other record by:

9 (1) A physician or licensed psychologist that the  
10 principal has an impairment in the ability to receive  
11 and evaluate information or make or communicate  
12 decisions even with the use of technological  
13 assistance; or

14 (2) An attorney at law, a judge, or an appropriate  
15 governmental official that the principal is  
16 incapacitated.

17 (d) A person authorized by the principal in the power of  
18 attorney to determine that the principal is incapacitated may  
19 act as the principal's personal representative pursuant to the  
20 Health Insurance Portability and Accountability Act, Sections  
21 1171 through 1179 of the Social Security Act, title 42 United  
22 States Code section 1320d, as amended, and applicable





1 regulations, to obtain access to the principal's health care  
2 information and communicate with the principal's health care  
3 provider.

4 § -6 Termination of power of attorney or agent's  
5 authority. (a) A power of attorney terminates when:

- 6 (1) The principal dies;
- 7 (2) The principal becomes incapacitated, if the power of  
8 attorney is not durable;
- 9 (3) The principal revokes the power of attorney;
- 10 (4) The power of attorney provides that it terminates;
- 11 (5) The purpose of the power of attorney is accomplished;
- 12 or
- 13 (6) The principal revokes the agent's authority or the  
14 agent dies, becomes incapacitated, or resigns, and the  
15 power of attorney does not provide for another agent  
16 to act under the power of attorney.
- 17 (b) An agent's authority terminates when:
  - 18 (1) The principal revokes the authority;
  - 19 (2) The agent dies, becomes incapacitated, or resigns;
  - 20 (3) An action is filed for the dissolution or annulment of  
21 the agent's marriage to the principal or their legal



1 separation, unless the power of attorney otherwise  
2 provides; or

3 (4) The power of attorney terminates.

4 (c) Unless the power of attorney otherwise provides, an  
5 agent's authority is exercisable until the authority terminates  
6 under subsection (b), notwithstanding a lapse of time since the  
7 execution of the power of attorney.

8 (d) Termination of an agent's authority or of a power of  
9 attorney is not effective as to the agent or another person  
10 that, without actual knowledge of the termination, acts in good  
11 faith under the power of attorney. An act so performed, unless  
12 otherwise invalid or unenforceable, binds the principal and the  
13 principal's successors in interest.

14 (e) Incapacity of the principal of a power of attorney  
15 that is not durable shall not revoke or terminate the power of  
16 attorney as to an agent or other person that, without actual  
17 knowledge of the incapacity, acts in good faith under the power  
18 of attorney. An act so performed, unless otherwise invalid or  
19 unenforceable, binds the principal and the principal's  
20 successors in interest.

21 (f) The execution of a power of attorney shall not revoke  
22 a power of attorney previously executed by the principal unless



1 the subsequent power of attorney provides that the previous  
2 power of attorney is revoked or that all other powers of  
3 attorney are revoked.

4 § -7 Co-agents and successor agents. (a) A principal  
5 may designate two or more persons to act as co-agents. Unless  
6 the power of attorney otherwise provides, each co-agent may  
7 exercise its authority independently.

8 (b) A principal may designate one or more successor agents  
9 to act if an agent resigns, dies, becomes incapacitated, is not  
10 qualified to serve, or declines to serve. A principal may grant  
11 authority to designate one or more successor agents to an agent  
12 or other person designated by name, office, or function. Unless  
13 the power of attorney otherwise provides, a successor agent:

14 (1) Has the same authority as that granted to the original  
15 agent; and

16 (2) May not act until all predecessor agents have  
17 resigned, died, become incapacitated, are no longer  
18 qualified to serve, or have declined to serve.

19 (c) Except as otherwise provided in the power of attorney  
20 and subsection (d), an agent that does not participate in or  
21 conceal a breach of fiduciary duty committed by another agent,



1 including a predecessor agent, shall not be liable for the  
2 actions of the other agent.

3 (d) An agent that has actual knowledge of a breach or  
4 imminent breach of fiduciary duty by another agent shall notify  
5 the principal and, if the principal is incapacitated, take any  
6 action reasonably appropriate in the circumstances to safeguard  
7 the principal's best interest. An agent that fails to notify  
8 the principal or take action as required by this subsection  
9 shall be liable for the reasonably foreseeable damages that  
10 could have been avoided if the agent had notified the principal  
11 or taken such action.

12 § -8 Reimbursement and compensation of agent. Unless  
13 the power of attorney otherwise provides, an agent shall be  
14 entitled to reimbursement of expenses reasonably incurred on  
15 behalf of the principal and to compensation that is reasonable  
16 under the circumstances.

17 § -9 Agent's acceptance. Except as otherwise provided  
18 in the power of attorney, a person accepts appointment as an  
19 agent under a power of attorney by exercising authority or  
20 performing duties as an agent or by any other assertion or  
21 conduct indicating acceptance.



1           §   -10 **Agent's duties.** (a) Notwithstanding provisions  
2 in the power of attorney, an agent that has accepted appointment  
3 shall:

- 4           (1) Act in accordance with the principal's reasonable  
5                expectations to the extent actually known by the agent  
6                and, otherwise, in the principal's best interest;
- 7           (2) Act in good faith; and
- 8           (3) Act only within the scope of authority granted in the  
9                power of attorney.

10           (b) Except as otherwise provided in the power of attorney,  
11 an agent that has accepted appointment shall:

- 12           (1) Act loyally for the principal's benefit;
- 13           (2) Act so as not to create a conflict of interest that  
14                impairs the agent's ability to act impartially in the  
15                principal's best interest;
- 16           (3) Act with the care, competence, and diligence  
17                ordinarily exercised by agents in similar  
18                circumstances;
- 19           (4) Keep a record of all receipts, disbursements, and  
20                transactions made on behalf of the principal;
- 21           (5) Cooperate with a person that has authority to make  
22                health care decisions for the principal to carry out



1 the principal's reasonable expectations to the extent  
2 actually known by the agent and, otherwise, act in the  
3 principal's best interest; and

4 (6) Attempt to preserve the principal's estate plan, to  
5 the extent actually known by the agent, if preserving  
6 the plan is consistent with the principal's best  
7 interest based on all relevant factors, including:

8 (A) The value and nature of the principal's property;

9 (B) The principal's foreseeable obligations and need  
10 for maintenance;

11 (C) Minimization of taxes, including income, estate,  
12 inheritance, generation-skipping transfer, and  
13 gift taxes; and

14 (D) Eligibility for a benefit, a program, or  
15 assistance under a statute or regulation.

16 (c) An agent that acts in good faith shall not be liable  
17 to any beneficiary of the principal's estate plan for failure to  
18 preserve the plan.

19 (d) An agent that acts with care, competence, and  
20 diligence for the best interest of the principal shall not be  
21 liable solely because the agent also benefits from the act or



1 has an individual or conflicting interest in relation to the  
2 property or affairs of the principal.

3 (e) If an agent is selected by the principal because of  
4 special skills or expertise possessed by the agent or in  
5 reliance on the agent's representation that the agent has  
6 special skills or expertise, the special skills or expertise  
7 shall be considered in determining whether the agent has acted  
8 with care, competence, and diligence under the circumstances.

9 (f) Absent a breach of duty to the principal, an agent  
10 shall not be liable if the value of the principal's property  
11 declines.

12 (g) An agent that exercises authority to delegate to  
13 another person the authority granted by the principal or that  
14 engages another person on behalf of the principal shall not be  
15 liable for an act, error of judgment, or default of that person  
16 if the agent exercises care, competence, and diligence in  
17 selecting and monitoring the person.

18 (h) Except as otherwise provided in the power of attorney,  
19 an agent shall not be required to disclose receipts,  
20 disbursements, or transactions conducted on behalf of the  
21 principal unless ordered by a court or requested by the  
22 principal, a guardian, a conservator, another fiduciary acting



1 for the principal, a governmental agency having authority to  
2 protect the welfare of the principal, or, upon the death of the  
3 principal, by the personal representative or successor in  
4 interest of the principal's estate. If so requested, within  
5 thirty days the agent shall comply with the request or provide a  
6 writing or other record substantiating why additional time is  
7 needed and shall comply with the request within an additional  
8 thirty days.

9       § -11 **Exoneration of agent.** A provision in a power of  
10 attorney relieving an agent of liability for breach of duty  
11 shall be binding on the principal and the principal's successors  
12 in interest except to the extent the provision:

13       (1) Relieves the agent of liability for breach of duty  
14             committed dishonestly, with an improper motive, or  
15             with reckless indifference to the purposes of the  
16             power of attorney or the best interest of the  
17             principal; or

18       (2) Was inserted as a result of an abuse of a confidential  
19             or fiduciary relationship with the principal.

20       § -12 **Judicial relief.** (a) The following persons may  
21 petition a court to construe a power of attorney or review the  
22 agent's conduct, and grant appropriate relief:





- 1 (1) The principal or the agent;
- 2 (2) A guardian, conservator, or other fiduciary acting for
- 3 the principal;
- 4 (3) A person authorized to make health care decisions for
- 5 the principal;
- 6 (4) The principal's spouse, parent, or descendant;
- 7 (5) An individual who would qualify as a presumptive heir
- 8 of the principal;
- 9 (6) A person named as a beneficiary to receive any
- 10 property, benefit, or contractual right on the
- 11 principal's death or as a beneficiary of a trust
- 12 created by or for the principal that has a financial
- 13 interest in the principal's estate;
- 14 (7) A governmental agency having regulatory authority to
- 15 protect the welfare of the principal;
- 16 (8) The principal's caregiver or another person that
- 17 demonstrates sufficient interest in the principal's
- 18 welfare; and
- 19 (9) A person asked to accept the power of attorney.
- 20 (b) Upon motion by the principal, the court shall dismiss
- 21 a petition filed under this section, unless the court finds that



1 the principal lacks capacity to revoke the agent's authority or  
2 the power of attorney.

3       § -13 **Agent's liability.** An agent that violates this  
4 chapter shall be liable to the principal or the principal's  
5 successors in interest for the amount required to:

- 6       (1) Restore the value of the principal's property to what  
7           it would have been had the violation not occurred; and  
8       (2) Reimburse the principal or the principal's successors  
9           in interest for the attorney's fees and costs paid on  
10          the agent's behalf.

11       § -14 **Agent's resignation; notice.** Unless the power of  
12 attorney provides a different method for an agent's resignation,  
13 an agent may resign by giving notice to the principal and, if  
14 the principal is incapacitated:

- 15       (1) To the conservator or guardian, if one has been  
16           appointed for the principal, and a co-agent or  
17           successor agent; or  
18       (2) If there is no person described in paragraph (1), to:  
19           (A) The principal's caregiver;  
20           (B) Another person reasonably believed by the agent  
21           to have sufficient interest in the principal's  
22           welfare; or



1 (C) A governmental agency having authority to protect  
2 the welfare of the principal.

3 § -15 Acceptance of and reliance upon acknowledged power  
4 of attorney. (a) For purposes of this section and section  
5 -16, "acknowledged" means purportedly verified before a  
6 notary public or other individual authorized to take  
7 acknowledgements.

8 (b) A person that in good faith accepts an acknowledged  
9 power of attorney without actual knowledge that the signature is  
10 not genuine may rely upon the presumption under section -3(b)  
11 that the signature is genuine.

12 (c) A person that in good faith accepts an acknowledged  
13 power of attorney without actual knowledge that the power of  
14 attorney is void, invalid, or terminated, that the purported  
15 agent's authority is void, invalid, or terminated, or that the  
16 agent is exceeding or improperly exercising the agent's  
17 authority may rely upon the power of attorney as if the power of  
18 attorney were genuine, valid, and still in effect, the agent's  
19 authority were genuine, valid, and still in effect, and the  
20 agent had not exceeded and had properly exercised the authority.



1 (d) A person that is asked to accept an acknowledged power  
2 of attorney may request, and rely upon, without further  
3 investigation:

4 (1) An agent's certification under penalty of perjury of  
5 any factual matter concerning the principal, agent, or  
6 power of attorney;

7 (2) An English translation of the power of attorney if the  
8 power of attorney contains, in whole or in part,  
9 language other than English; and

10 (3) An opinion of counsel as to any matter of law  
11 concerning the power of attorney if the person making  
12 the request provides in a writing or other record the  
13 reason for the request.

14 (e) An English translation or an opinion of counsel  
15 requested under this section shall be provided at the  
16 principal's expense unless the request is made more than seven  
17 business days after the power of attorney is presented for  
18 acceptance.

19 (f) For purposes of this section and section -16, a  
20 person that conducts activities through employees is without  
21 actual knowledge of a fact relating to a power of attorney, a  
22 principal, or an agent if the employee conducting the



1 transaction involving the power of attorney is without actual  
2 knowledge of the fact.

3 § -16 Liability for refusal to accept acknowledged power  
4 of attorney. (a) Except as otherwise provided in subsection  
5 (b):

6 (1) A person shall either accept an acknowledged power of  
7 attorney or request a certification, a translation, or  
8 an opinion of counsel under section -15(d) no later  
9 than seven business days after presentation of the  
10 power of attorney for acceptance;

11 (2) If a person requests a certification, a translation,  
12 or an opinion of counsel under section -15(d), the  
13 person shall accept the power of attorney no later  
14 than five business days after receipt of the  
15 certification, translation, or opinion of counsel; and

16 (3) A person may not require an additional or different  
17 form of power of attorney for authority granted in the  
18 power of attorney presented.

19 (b) A person shall not be required to accept an  
20 acknowledged power of attorney if:



- 1           (1) The person is not otherwise required to engage in a  
2           transaction with the principal in the same  
3           circumstances;
- 4           (2) Engaging in a transaction with the agent or the  
5           principal in the same circumstances would be  
6           inconsistent with federal law;
- 7           (3) The person has actual knowledge of the termination of  
8           the agent's authority or of the power of attorney  
9           before exercise of the power;
- 10          (4) A request for a certification, a translation, or an  
11          opinion of counsel under section     -15(d) is refused;
- 12          (5) The person in good faith believes that the power is  
13          not valid or that the agent does not have the  
14          authority to perform the act requested, whether or not  
15          a certification, a translation, or an opinion of  
16          counsel under section     -15(d) has been requested or  
17          provided; or
- 18          (6) The person makes, or has actual knowledge that another  
19          person has made, a report to the adult protective and  
20          community services branch of the department of human  
21          services stating a good faith belief that the  
22          principal may be subject to physical or financial

1 abuse, neglect, exploitation, or abandonment by the  
2 agent or a person acting for or with the agent.

3 (c) A person that refuses to accept an acknowledged power  
4 of attorney in violation of this section shall be subject to:

5 (1) A court order mandating acceptance of the power of  
6 attorney; and

7 (2) Liability for reasonable attorney's fees and costs  
8 incurred in any action or proceeding that confirms the  
9 validity of the power of attorney or mandates  
10 acceptance of the power of attorney.

11 § -17 Principles of law and equity. Unless displaced by  
12 a provision of this chapter, the principles of law and equity  
13 shall supplement this chapter.

14 § -18 Laws applicable to financial institutions and  
15 entities. This chapter shall not supersede any other law  
16 applicable to financial institutions or other entities, and the  
17 other law shall control if inconsistent with this chapter.

18 § -19 Remedies under other law. The remedies under this  
19 chapter shall not be exclusive and shall not abrogate any right  
20 or remedy under the law of this State other than this chapter.

21 PART II. AUTHORITY



1           §   -31 Authority that requires specific grant; grant of  
2 general authority. (a) An agent under a power of attorney may  
3 do the following on behalf of the principal or with the  
4 principal's property only if the power of attorney expressly  
5 grants the agent the authority and exercise of the authority is  
6 not otherwise prohibited by another agreement or instrument to  
7 which the authority or property is subject:

8           (1) Create, amend, revoke, or terminate an inter vivos  
9 trust;

10          (2) Make a gift;

11          (3) Create or change rights of survivorship;

12          (4) Create or change a beneficiary designation;

13          (5) Delegate authority granted under the power of  
14 attorney;

15          (6) Waive the principal's right to be a beneficiary of a  
16 joint and survivor annuity, including a survivor  
17 benefit under a retirement plan; or

18          (7) Exercise fiduciary powers that the principal has  
19 authority to delegate.

20          (b) Notwithstanding a grant of authority to do an act  
21 described in subsection (a), unless the power of attorney  
22 otherwise provides, an agent that is not an ancestor, spouse, or





1 descendant of the principal may not exercise authority under a  
2 power of attorney to create in the agent, or in an individual to  
3 whom the agent owes a legal obligation of support, an interest  
4 in the principal's property, whether by gift, right of  
5 survivorship, beneficiary designation, disclaimer, or otherwise.

6 (c) Subject to subsections (a), (b), (d), and (e), if a  
7 power of attorney grants to an agent authority to do all acts  
8 that a principal could do, the agent shall have the general  
9 authority described in sections -34 through -46.

10 (d) Unless the power of attorney otherwise provides, a  
11 grant of authority to make a gift shall be subject to section  
12 -47.

13 (e) Subject to subsections (a), (b), and (d), if the  
14 subjects over which authority is granted in a power of attorney  
15 are similar or overlap, the broadest authority shall control.

16 (f) Authority granted in a power of attorney shall be  
17 exercisable with respect to property that the principal has when  
18 the power of attorney is executed or acquires later, whether or  
19 not the property is located in this State and whether or not the  
20 authority is exercised or the power of attorney is executed in  
21 this State.



1 (g) An act performed by an agent pursuant to a power of  
2 attorney shall have the same effect and inure to the benefit of  
3 and bind the principal and the principal's successors in  
4 interest as if the principal had performed the act.

5 § -32 Incorporation of authority. (a) An agent shall  
6 have authority described in this part if the power of attorney  
7 refers to general authority with respect to the descriptive term  
8 for the subjects stated in sections -34 through -47 or  
9 cites the section in which the authority is described.

10 (b) A reference in a power of attorney to general  
11 authority with respect to the descriptive term for a subject in  
12 sections -34 through -47 or a citation to a section of  
13 sections -34 through -47 incorporates the entire section  
14 as if it were set out in full in the power of attorney.

15 (c) A principal may modify authority incorporated by  
16 reference.

17 § -33 Construction of authority generally. Except as  
18 otherwise provided in the power of attorney, by executing a  
19 power of attorney that incorporates by reference a subject  
20 described in sections -34 through -47 or that grants to an  
21 agent authority to do all acts that a principal could do



1 pursuant to section -31(c), a principal authorizes the agent,  
2 with respect to that subject, to:

- 3 (1) Demand, receive, and obtain by litigation or  
4 otherwise, money or another thing of value to which  
5 the principal is, may become, or claims to be  
6 entitled, and conserve, invest, disburse, or use  
7 anything so received or obtained for the purposes  
8 intended;
- 9 (2) Contract in any manner with any person, on terms  
10 agreeable to the agent, to accomplish a purpose of a  
11 transaction and perform, rescind, cancel, terminate,  
12 reform, restate, release, or modify the contract or  
13 another contract made by or on behalf of the  
14 principal;
- 15 (3) Execute, acknowledge, seal, deliver, file, or record  
16 any instrument or communication the agent considers  
17 desirable to accomplish a purpose of a transaction,  
18 including creating at any time a schedule listing some  
19 or all of the principal's property and attaching it to  
20 the power of attorney;
- 21 (4) Initiate, participate in, submit to alternative  
22 dispute resolution, settle, oppose, or propose or



- 1 accept a compromise with respect to a claim existing  
2 in favor of or against the principal or intervene in  
3 litigation relating to the claim;
- 4 (5) Seek on the principal's behalf the assistance of a  
5 court or other governmental agency to carry out an act  
6 authorized in the power of attorney;
- 7 (6) Engage, compensate, and discharge an attorney,  
8 accountant, discretionary investment manager, expert  
9 witness, or other advisor;
- 10 (7) Prepare, execute, and file a record, report, or other  
11 document to safeguard or promote the principal's  
12 interest under a statute or regulation;
- 13 (8) Communicate with any representative or employee of a  
14 government or governmental subdivision, agency, or  
15 instrumentality, on behalf of the principal;
- 16 (9) Access communications intended for, and communicate on  
17 behalf of the principal, whether by mail, electronic  
18 transmission, telephone, or other means; and
- 19 (10) Do any lawful act with respect to the subject and all  
20 property related to the subject.

21 § -34 Real property. Unless the power of attorney  
22 otherwise provides, language in a power of attorney granting



1 general authority with respect to real property shall authorize  
2 the agent to:

3 (1) Demand, buy, lease, receive, accept as a gift or as  
4 security for an extension of credit, or otherwise  
5 acquire or reject an interest in real property or a  
6 right incident to real property;

7 (2) Sell; exchange; convey with or without covenants,  
8 representations, or warranties; quitclaim; release;  
9 surrender; retain title for security; encumber;  
10 partition; consent to partitioning; subject to an  
11 easement or covenant; subdivide; apply for zoning or  
12 other governmental permits; plat or consent to  
13 platting; develop; grant an option concerning; lease;  
14 sublease; contribute to an entity in exchange for an  
15 interest in that entity; or otherwise grant or dispose  
16 of an interest in real property or a right incident to  
17 real property;

18 (3) Pledge or mortgage an interest in real property or  
19 right incident to real property as security to borrow  
20 money or pay, renew, or extend the time of payment of  
21 a debt of the principal or a debt guaranteed by the  
22 principal;



- 1           (4) Release, assign, satisfy, or enforce by litigation or  
2           otherwise a mortgage, deed of trust, conditional sale  
3           contract, encumbrance, lien, or other claim to real  
4           property that exists or is asserted;
- 5           (5) Manage or conserve an interest in real property or a  
6           right incident to real property owned or claimed to be  
7           owned by the principal, including by:
  - 8           (A) Insuring against liability or casualty or other  
9           loss;
  - 10           (B) Obtaining or regaining possession of or  
11           protecting the interest or right by litigation or  
12           otherwise;
  - 13           (C) Paying, assessing, compromising, or contesting  
14           taxes or assessments or applying for and  
15           receiving refunds in connection with them; and
  - 16           (D) Purchasing supplies, hiring assistance or labor,  
17           and making repairs or alterations to the real  
18           property;
- 19           (6) Use, develop, alter, replace, remove, erect, or  
20           install structures or other improvements upon real  
21           property in or incident to which the principal has, or  
22           claims to have, an interest or right;



1 (7) Participate in a reorganization with respect to real  
2 property or an entity that owns an interest in or  
3 right incident to real property and receive, hold, and  
4 act with respect to stocks and bonds or other property  
5 received in a plan of reorganization, including by:

6 (A) Selling or otherwise disposing of them;

7 (B) Exercising or selling an option, right of  
8 conversion, or similar right with respect to  
9 them; and

10 (C) Exercising any voting rights in person or by  
11 proxy;

12 (8) Change the form of title of an interest in or right  
13 incident to real property; and

14 (9) Dedicate to public use, with or without consideration,  
15 easements or other real property in which the  
16 principal has, or claims to have, an interest.

17 § -35 **Tangible personal property.** Unless the power of  
18 attorney otherwise provides, language in a power of attorney  
19 granting general authority with respect to tangible personal  
20 property shall authorize the agent to:

21 (1) Demand, buy, receive, accept as a gift or as security  
22 for an extension of credit, or otherwise acquire or



- 1 reject ownership or possession of tangible personal  
2 property or an interest in tangible personal property;
- 3 (2) Sell; exchange; convey with or without covenants,  
4 representations, or warranties; quitclaim; release;  
5 surrender; create a security interest in; grant  
6 options concerning; lease; sublease; or otherwise  
7 dispose of tangible personal property or an interest  
8 in tangible personal property;
- 9 (3) Grant a security interest in tangible personal  
10 property or an interest in tangible personal property  
11 as security to borrow money or pay, renew, or extend  
12 the time of payment of a debt of the principal or a  
13 debt guaranteed by the principal;
- 14 (4) Release, assign, satisfy, or enforce by litigation or  
15 otherwise, a security interest, lien, or other claim  
16 on behalf of the principal, with respect to tangible  
17 personal property or an interest in tangible personal  
18 property;
- 19 (5) Manage or conserve tangible personal property or an  
20 interest in tangible personal property on behalf of  
21 the principal, including:





- 1 (A) Insuring against liability or casualty or other
- 2 loss;
- 3 (B) Obtaining or regaining possession of or
- 4 protecting the property or interest, by
- 5 litigation or otherwise;
- 6 (C) Paying, assessing, compromising, or contesting
- 7 taxes or assessments or applying for and
- 8 receiving refunds in connection with taxes or
- 9 assessments;
- 10 (D) Moving the property from place to place;
- 11 (E) Storing the property for hire or on a gratuitous
- 12 bailment; and
- 13 (F) Using and making repairs, alterations, or
- 14 improvements to the property; and
- 15 (6) Change the form of title of an interest in tangible
- 16 personal property.

17 § -36 **Stocks and bonds.** Unless the power of attorney  
18 otherwise provides, language in a power of attorney granting  
19 general authority with respect to stocks and bonds shall  
20 authorize the agent to:

- 21 (1) Buy, sell, and exchange stocks and bonds;

- 1 (2) Establish, continue, modify, or terminate an account  
2 with respect to stocks and bonds;
- 3 (3) Pledge stocks and bonds as security to borrow, pay,  
4 renew, or extend the time of payment of a debt of the  
5 principal;
- 6 (4) Receive certificates and other evidences of ownership  
7 with respect to stocks and bonds; and
- 8 (5) Exercise voting rights with respect to stocks and  
9 bonds in person or by proxy, enter into voting trusts,  
10 and consent to limitations on the right to vote.

11 § -37 **Commodities and options.** Unless the power of  
12 attorney otherwise provides, language in a power of attorney  
13 granting general authority with respect to commodities and  
14 options shall authorize the agent to:

- 15 (1) Buy, sell, exchange, assign, settle, and exercise  
16 commodity futures contracts and call or put options on  
17 stocks or stock indexes traded on a regulated option  
18 exchange; and
- 19 (2) Establish, continue, modify, and terminate option  
20 accounts.

21 § -38 **Banks and other financial institutions.** Unless  
22 the power of attorney otherwise provides, language in a power of



1 attorney granting general authority with respect to banks and  
2 other financial institutions shall authorize the agent to:

3 (1) Continue, modify, and terminate an account or other  
4 banking arrangement made by or on behalf of the  
5 principal;

6 (2) Establish, modify, and terminate an account or other  
7 banking arrangement with a bank, trust company,  
8 savings and loan association, credit union, thrift  
9 company, brokerage firm, or other financial  
10 institution selected by the agent;

11 (3) Contract for services available from a financial  
12 institution, including renting a safe deposit box or  
13 space in a vault;

14 (4) Withdraw, by check, order, electronic funds transfer,  
15 or otherwise, money or property of the principal  
16 deposited with or left in the custody of a financial  
17 institution;

18 (5) Receive statements of account, vouchers, notices, and  
19 similar documents from a financial institution and act  
20 with respect to them;

21 (6) Enter a safe deposit box or vault and withdraw or add  
22 to the contents;



- 1           (7) Borrow money and pledge as security personal property  
2           of the principal necessary to borrow money or pay,  
3           renew, or extend the time of payment of a debt of the  
4           principal or a debt guaranteed by the principal;
- 5           (8) Make, assign, draw, endorse, discount, guarantee, and  
6           negotiate promissory notes, checks, drafts, and other  
7           negotiable or nonnegotiable paper of the principal or  
8           payable to the principal or the principal's order,  
9           transfer money, receive the cash or other proceeds of  
10          those transactions, and accept a draft drawn by a  
11          person upon the principal and pay it when due;
- 12          (9) Receive for the principal and act upon a sight draft,  
13          warehouse receipt, or other document of title whether  
14          tangible or electronic, or other negotiable or  
15          nonnegotiable instrument;
- 16          (10) Apply for, receive, and use letters of credit, credit  
17          and debit cards, electronic transaction  
18          authorizations, and traveler's checks from a financial  
19          institution and give an indemnity or other agreement  
20          in connection with letters of credit; and



1           (11) Consent to an extension of the time of payment with  
2                   respect to commercial paper or a financial transaction  
3                   with a financial institution.

4           §   -39 Operation of entity or business. Unless the power  
5 of attorney otherwise provides, and subject to the terms of a  
6 document or an agreement governing an entity or an entity  
7 ownership interest, language in a power of attorney granting  
8 general authority with respect to operation of an entity or  
9 business shall authorize the agent to:

- 10           (1) Operate, buy, sell, enlarge, reduce, or terminate an  
11                   ownership interest;
- 12           (2) Perform a duty or discharge a liability and exercise  
13                   in person or by proxy a right, power, privilege, or  
14                   option that the principal has, may have, or claims to  
15                   have;
- 16           (3) Enforce the terms of an ownership agreement;
- 17           (4) Initiate, participate in, submit to alternative  
18                   dispute resolution, settle, oppose, or propose or  
19                   accept a compromise with respect to litigation to  
20                   which the principal is a party because of an ownership  
21                   interest;



- 1           (5) Exercise in person or by proxy, or enforce by  
2           litigation or otherwise, a right, power, privilege, or  
3           option the principal has or claims to have as the  
4           holder of stocks and bonds;
- 5           (6) Initiate, participate in, submit to alternative  
6           dispute resolution, settle, oppose, or propose or  
7           accept a compromise with respect to litigation to  
8           which the principal is a party concerning stocks and  
9           bonds;
- 10          (7) With respect to an entity or business owned solely by  
11          the principal:
- 12           (A) Continue, modify, renegotiate, extend, and  
13           terminate a contract made by or on behalf of the  
14           principal with respect to the entity or business  
15           before execution of the power of attorney;
- 16           (B) Determine:
- 17               (i) The location of its operation;
- 18               (ii) The nature and extent of its business;
- 19               (iii) The methods of manufacturing, selling,  
20               merchandising, financing, accounting, and  
21               advertising employed in its operation;



- 1 (iv) The amount and types of insurance carried;  
2 and  
3 (v) The mode of engaging, compensating, and  
4 dealing with its employees and accountants,  
5 attorneys, or other advisors;
- 6 (C) Change the name or form of organization under  
7 which the entity or business is operated and  
8 enter into an ownership agreement with other  
9 persons to take over all or part of the operation  
10 of the entity or business; and
- 11 (D) Demand and receive money due or claimed by the  
12 principal or on the principal's behalf in the  
13 operation of the entity or business and control  
14 and disburse the money in the operation of the  
15 entity or business;
- 16 (8) Put additional capital into an entity or business in  
17 which the principal has an interest;
- 18 (9) Join in a plan of reorganization, consolidation,  
19 conversion, domestication, or merger of the entity or  
20 business;
- 21 (10) Sell or liquidate all or part of an entity or  
22 business;



- 1           (11) Establish the value of an entity or business under a
- 2                   buy-out agreement to which the principal is a party;
- 3           (12) Prepare, sign, file, and deliver reports, compilations
- 4                   of information, returns, or other papers with respect
- 5                   to an entity or business and make related payments;
- 6                   and
- 7           (13) Pay, compromise, or contest taxes, assessments, fines,
- 8                   or penalties and perform any other act to protect the
- 9                   principal from illegal or unnecessary taxation,
- 10                  assessments, fines, or penalties, with respect to an
- 11                  entity or business, including attempts to recover, in
- 12                  any manner permitted by law, money paid before or
- 13                  after the execution of the power of attorney.

14           § -40 Insurance and annuities. Unless the power of

15 attorney otherwise provides, language in a power of attorney

16 granting general authority with respect to insurance and

17 annuities shall authorize the agent to:

- 18           (1) Continue, pay the premium or make a contribution on,
- 19                   modify, exchange, rescind, release, or terminate a
- 20                   contract procured by or on behalf of the principal
- 21                   that insures or provides an annuity to either the





- 1 principal or another person, whether or not the  
2 principal is a beneficiary under the contract;
- 3 (2) Procure new, different, and additional contracts of  
4 insurance and annuities for the principal and the  
5 principal's spouse, children, and other dependents,  
6 and select the amount, type of insurance or annuity,  
7 and mode of payment;
- 8 (3) Pay the premium or make a contribution on, modify,  
9 exchange, rescind, release, or terminate a contract of  
10 insurance or annuity procured by the agent;
- 11 (4) Apply for and receive a loan secured by a contract of  
12 insurance or annuity;
- 13 (5) Surrender and receive the cash surrender value on a  
14 contract of insurance or annuity;
- 15 (6) Exercise an election;
- 16 (7) Exercise investment powers available under a contract  
17 of insurance or annuity;
- 18 (8) Change the manner of paying premiums on a contract of  
19 insurance or annuity;
- 20 (9) Change or convert the type of insurance or annuity  
21 with respect to which the principal has or claims to  
22 have authority described in this section;



- 1           (10) Apply for and procure a benefit or assistance under a  
2                   statute or regulation to guarantee or pay premiums of  
3                   a contract of insurance on the life of the principal;
- 4           (11) Collect, sell, assign, hypothecate, borrow against, or  
5                   pledge the interest of the principal in a contract of  
6                   insurance or annuity;
- 7           (12) Select the form and timing of the payment of proceeds  
8                   from a contract of insurance or annuity; and
- 9           (13) Pay, from proceeds or otherwise; compromise or  
10                   contest; and apply for refunds in connection with a  
11                   tax or assessment levied by a taxing authority with  
12                   respect to a contract of insurance or annuity or its  
13                   proceeds or liability accruing by reason of the tax or  
14                   assessment.

15           §   -41   **Estates, trusts, and other beneficial interests.**

16           (a) In this section, "estate, trust, or other beneficial  
17                   interest" means a trust, probate estate, guardianship,  
18                   conservatorship, escrow, or custodianship or a fund from which  
19                   the principal is, may become, or claims to be, entitled to a  
20                   share or payment.

21           (b) Unless the power of attorney otherwise provides,  
22                   language in a power of attorney granting general authority with



1 respect to estates, trusts, and other beneficial interests shall  
2 authorize the agent to:

3 (1) Accept, receive, receipt for, sell, assign, pledge, or  
4 exchange a share in or payment from an estate, trust,  
5 or other beneficial interest;

6 (2) Demand or obtain money or another thing of value to  
7 which the principal is, may become, or claims to be,  
8 entitled by reason of an estate, trust, or other  
9 beneficial interest, by litigation or otherwise;

10 (3) Exercise for the benefit of the principal a presently  
11 exercisable general power of appointment held by the  
12 principal;

13 (4) Initiate, participate in, submit to alternative  
14 dispute resolution, settle, oppose, or propose or  
15 accept a compromise with respect to litigation to  
16 ascertain the meaning, validity, or effect of a deed,  
17 will, declaration of trust, or other instrument or  
18 transaction affecting the interest of the principal;

19 (5) Initiate, participate in, submit to alternative  
20 dispute resolution, settle, oppose, or propose or  
21 accept a compromise with respect to litigation to  
22 remove, substitute, or surcharge a fiduciary;



1 (6) Conserve, invest, disburse, or use anything received  
2 for an authorized purpose;

3 (7) Transfer an interest of the principal in real  
4 property, stocks and bonds, accounts with financial  
5 institutions or securities intermediaries, insurance,  
6 annuities, and other property to the trustee of a  
7 revocable trust created by the principal as settlor;  
8 and

9 (8) Reject, renounce, disclaim, release, or consent to a  
10 reduction in or modification of a share in or payment  
11 from an estate, trust, or other beneficial interest.

12 § -42 Claims and litigation. Unless the power of  
13 attorney otherwise provides, language in a power of attorney  
14 granting general authority with respect to claims and litigation  
15 shall authorize the agent to:

16 (1) Assert and maintain before a court or administrative  
17 agency a claim, claim for relief, cause of action,  
18 counterclaim, offset, recoupment, or defense,  
19 including an action to recover property or other thing  
20 of value, recover damages sustained by the principal,  
21 eliminate or modify tax liability, or seek an  
22 injunction, specific performance, or other relief;



- 1 (2) Bring an action to determine adverse claims or  
2 intervene or otherwise participate in litigation;
- 3 (3) Seek an attachment, garnishment, order of arrest, or  
4 other preliminary, provisional, or intermediate relief  
5 and use an available procedure to effect or satisfy a  
6 judgment, order, or decree;
- 7 (4) Make or accept a tender, offer of judgment, or  
8 admission of facts, submit a controversy on an agreed  
9 statement of facts, consent to examination, and bind  
10 the principal in litigation;
- 11 (5) Submit to alternative dispute resolution, settle, and  
12 propose or accept a compromise;
- 13 (6) Waive the issuance and service of process upon the  
14 principal, accept service of process, appear for the  
15 principal, designate persons upon which process  
16 directed to the principal may be served, execute and  
17 file or deliver stipulations on the principal's  
18 behalf, verify pleadings, seek appellate review,  
19 procure and give surety and indemnity bonds, contract  
20 and pay for the preparation and printing of records  
21 and briefs, receive, execute, and file or deliver a  
22 consent, waiver, release, confession of judgment,



- 1 satisfaction of judgment, notice, agreement, or other  
2 instrument in connection with the prosecution,  
3 settlement, or defense of a claim or litigation;
- 4 (7) Act for the principal with respect to bankruptcy or  
5 insolvency, whether voluntary or involuntary,  
6 concerning the principal or some other person, or with  
7 respect to a reorganization, receivership, or  
8 application for the appointment of a receiver or  
9 trustee that affects an interest of the principal in  
10 property or other thing of value;
- 11 (8) Pay a judgment, award, or order against the principal  
12 or a settlement made in connection with a claim or  
13 litigation; and
- 14 (9) Receive money or another thing of value paid in  
15 settlement of or as proceeds of a claim or litigation.

16 **§ -43 Personal and family maintenance.** (a) Unless the  
17 power of attorney otherwise provides, language in a power of  
18 attorney granting general authority with respect to personal and  
19 family maintenance shall authorize the agent to:

- 20 (1) Perform the acts necessary to maintain the customary  
21 standard of living of the principal, the principal's

- 1 spouse, and the following individuals, whether living  
2 when the power of attorney is executed or later born:
- 3 (A) The principal's children;
  - 4 (B) Other individuals legally entitled to be  
5 supported by the principal; and
  - 6 (C) The individuals whom the principal has  
7 customarily supported or indicated the intent to  
8 support;
- 9 (2) Make periodic payments of child support and other  
10 family maintenance required by a court or governmental  
11 agency or an agreement to which the principal is a  
12 party;
- 13 (3) Provide living quarters for the individuals described  
14 in subsection (1) by:
- 15 (A) Purchase, lease, or other contract; or
  - 16 (B) Paying the operating costs, including interest,  
17 amortization payments, repairs, improvements, and  
18 taxes, for premises owned by the principal or  
19 occupied by those individuals;
- 20 (4) Provide normal domestic help, usual vacations and  
21 travel expenses, and funds for shelter, clothing,  
22 food, appropriate education, including postsecondary



- 1 and vocational education, and other current living  
2 costs for the individuals described in subsection (1);
- 3 (5) Pay expenses for necessary health care and custodial  
4 care on behalf of the individuals described in  
5 subsection (1);
- 6 (6) Act as the principal's personal representative  
7 pursuant to the Health Insurance Portability and  
8 Accountability Act, Sections 1171 through 1179 of the  
9 Social Security Act, title 42 United States Code  
10 section 1320d, as amended, and applicable regulations,  
11 in making decisions related to the past, present, or  
12 future payment for the provision of health care  
13 consented to by the principal or anyone authorized  
14 under the law of this State to consent to health care  
15 on behalf of the principal;
- 16 (7) Continue any provision made by the principal for  
17 automobiles or other means of transportation,  
18 including registering, licensing, insuring, and  
19 replacing them, for the individuals described in  
20 subsection (1);





1 (8) Maintain credit and debit accounts for the convenience  
2 of the individuals described in subsection (1) and  
3 open new accounts; and

4 (9) Continue payments incidental to the membership or  
5 affiliation of the principal in a religious  
6 institution, club, society, order, or other  
7 organization or to continue contributions to those  
8 organizations.

9 (b) Authority with respect to personal and family  
10 maintenance shall be neither dependent upon, nor limited by,  
11 authority that an agent may or may not have with respect to  
12 gifts under this chapter.

13 § -44 Benefits from governmental programs or civil or  
14 military service. (a) In this section, "benefits from  
15 governmental programs or civil or military service" means any  
16 benefit, program, or assistance provided under a statute or  
17 regulation, including social security, medicare, and medicaid.

18 (b) Unless the power of attorney otherwise provides,  
19 language in a power of attorney granting general authority with  
20 respect to benefits from governmental programs or civil or  
21 military service shall authorize the agent to:



- 1           (1)   Execute vouchers in the name of the principal for  
2                   allowances and reimbursements payable by the United  
3                   States or a foreign government or by a state or  
4                   subdivision of a state to the principal, including  
5                   allowances and reimbursements for transportation of  
6                   the individuals described in subsection     -43(a)(1),  
7                   and for shipment of their household effects;
- 8           (2)   Take possession and order the removal and shipment of  
9                   property of the principal from a post, warehouse,  
10                  depot, dock, or other place of storage or safekeeping,  
11                  either governmental or private, and execute and  
12                  deliver a release, voucher, receipt, bill of lading,  
13                  shipping ticket, certificate, or other instrument for  
14                  that purpose;
- 15          (3)   Enroll in, apply for, select, reject, change, amend,  
16                  or discontinue, on the principal's behalf, a benefit  
17                  or program;
- 18          (4)   Prepare, file, and maintain a claim of the principal  
19                  for a benefit or assistance, financial or otherwise,  
20                  to which the principal may be entitled under a statute  
21                  or regulation;



1 (5) Initiate, participate in, submit to alternative  
2 dispute resolution, settle, oppose, or propose or  
3 accept a compromise with respect to litigation  
4 concerning any benefit or assistance the principal may  
5 be entitled to receive under a statute or regulation;  
6 and

7 (6) Receive the financial proceeds of a claim described in  
8 subsection (4) and conserve, invest, disburse, or use  
9 for a lawful purpose anything so received.

10 § -45 Retirement plans. (a) In this section,  
11 "retirement plan" means a plan or account created by an  
12 employer, the principal, or another individual to provide  
13 retirement benefits or deferred compensation of which the  
14 principal is a participant, beneficiary, or owner, including a  
15 plan or account under the following sections of the Internal  
16 Revenue Code of 1986, as amended:

17 (1) An individual retirement account under Internal  
18 Revenue Code Section 408, title 26 United States Code  
19 section 408, as amended;

20 (2) A Roth individual retirement account under Internal  
21 Revenue Code Section 408A, title 26 United States Code  
22 section 408A, as amended;



1 (3) A deemed individual retirement account under Internal  
2 Revenue Code Section 408(q), title 26 United States  
3 Code section 408(q), as amended;

4 (4) An annuity or mutual fund custodial account under  
5 Internal Revenue Code Section 403(b), title 26 United  
6 States Code section 403(b), as amended;

7 (5) A pension, profit-sharing, stock bonus, or other  
8 retirement plan qualified under Internal Revenue Code  
9 Section 401(a), title 26 United States Code section  
10 401(a), as amended;

11 (6) A plan under Internal Revenue Code Section 457(b),  
12 title 26 United States Code section 457(b), as  
13 amended; and

14 (7) A nonqualified deferred compensation plan under  
15 Internal Revenue Code Section 409A, title 26 United  
16 States Code section 409A, as amended.

17 (b) Unless the power of attorney otherwise provides,  
18 language in a power of attorney granting general authority with  
19 respect to retirement plans shall authorize the agent to:

20 (1) Select the form and timing of payments under a  
21 retirement plan and withdraw benefits from a plan;



- 1           (2) Make a rollover, including a direct trustee-to-trustee
- 2                    rollover, of benefits from one retirement plan to
- 3                    another;
- 4           (3) Establish a retirement plan in the principal's name;
- 5           (4) Make contributions to a retirement plan;
- 6           (5) Exercise investment powers available under a
- 7                    retirement plan; and
- 8           (6) Borrow from, sell assets to, or purchase assets from a
- 9                    retirement plan.

10           § -46 Taxes. Unless the power of attorney otherwise  
11 provides, language in a power of attorney granting general  
12 authority with respect to taxes shall authorize the agent to:

- 13           (1) Prepare, sign, and file federal, state, local, and
- 14                    foreign income, gift, payroll, property, Federal
- 15                    Insurance Contributions Act, and other tax returns,
- 16                    claims for refunds, requests for extension of time,
- 17                    petitions regarding tax matters, and any other tax-
- 18                    related documents, including receipts, offers,
- 19                    waivers, consents, including consents and agreements
- 20                    under Internal Revenue Code Section 2032A, 26 title
- 21                    United States Code section 2032A, as amended, closing
- 22                    agreements, and any power of attorney required by the



1 Internal Revenue Service or other taxing authority  
2 with respect to a tax year upon which the statute of  
3 limitations has not run and the following twenty-five  
4 tax years;

5 (2) Pay taxes due, collect refunds, post bonds, receive  
6 confidential information, and contest deficiencies  
7 determined by the Internal Revenue Service or other  
8 taxing authority;

9 (3) Exercise any election available to the principal under  
10 federal, state, local, or foreign tax law; and

11 (4) Act for the principal in all tax matters for all  
12 periods before the Internal Revenue Service, or other  
13 taxing authority.

14 § -47 Gifts. (a) In this section, a gift "for the  
15 benefit of" a person includes a gift to a trust, an account  
16 under chapter 553A, the Uniform Transfers to Minors Act, and a  
17 tuition savings account or prepaid tuition plan as defined under  
18 Internal Revenue Code section 529, 26 title United States Code  
19 section 529, as amended.

20 (b) Unless the power of attorney otherwise provides,  
21 language in a power of attorney granting general authority with  
22 respect to gifts shall authorize the agent only to:



1           (1) Make outright to, or for the benefit of, a person, a  
2           gift of any of the principal's property, including by  
3           the exercise of a presently exercisable general power  
4           of appointment held by the principal, in an amount per  
5           donee not to exceed the annual dollar limits of the  
6           federal gift tax exclusion under Internal Revenue Code  
7           Section 2503(b), title 26 United States Code section  
8           2503(b), as amended, without regard to whether the  
9           federal gift tax exclusion applies to the gift, or if  
10          the principal's spouse agrees to consent to a split  
11          gift pursuant to Internal Revenue Code Section 2513,  
12          title 26 United States Code section 2513, as amended,  
13          in an amount per donee not to exceed twice the annual  
14          federal gift tax exclusion limit; and

15          (2) Consent, pursuant to Internal Revenue Code Section  
16          2513, title 26 United States Code section 2513, as  
17          amended, to the splitting of a gift made by the  
18          principal's spouse in an amount per donee not to  
19          exceed the aggregate annual gift tax exclusions for  
20          both spouses.

21          (c) An agent may make a gift of the principal's property  
22          only as the agent determines is consistent with the principal's



1 objectives if actually known by the agent and, if unknown, as  
2 the agent determines is consistent with the principal's best  
3 interest based on all relevant factors, including:

4 (1) The value and nature of the principal's property;

5 (2) The principal's foreseeable obligations and need for  
6 maintenance;

7 (3) Minimization of taxes, including income, estate,  
8 inheritance, generation-skipping transfer, and gift  
9 taxes;

10 (4) Eligibility for a benefit, a program, or assistance  
11 under a statute or regulation; and

12 (5) The principal's personal history of making or joining  
13 in making gifts.

14 PART III. STATUTORY FORMS

15 § -51 Statutory form power of attorney. A document  
16 substantially in the following form may be used to create a  
17 statutory form power of attorney that has the meaning and effect  
18 prescribed by this chapter.

19 STATE OF HAWAII

20 STATUTORY FORM POWER OF ATTORNEY

21 IMPORTANT INFORMATION





1           This power of attorney authorizes another person (your  
2 agent) to make decisions concerning your property for you (the  
3 principal). Your agent will be able to make decisions and act  
4 with respect to your property, including your money, whether or  
5 not you are able to act for yourself. The meaning of authority  
6 over subjects listed on this form is explained in the Uniform  
7 Power of Attorney Act in chapter           , Hawaii Revised Statutes.

8           This power of attorney does not authorize the agent to make  
9 health care decisions for you.

10           You should select someone you trust to serve as your agent.  
11 Unless you specify otherwise, generally the agent's authority  
12 will continue until you die or revoke the power of attorney or  
13 the agent resigns or is unable to act for you.

14           Your agent is entitled to reasonable compensation unless  
15 you state otherwise in the Special Instructions.

16           This form provides for designation of one agent. If you  
17 wish to name more than one agent, you may name a co-agent in the  
18 Special Instructions. Co-agents are not required to act  
19 together unless you include that requirement in the Special  
20 Instructions.



1 If your agent is unable or unwilling to act for you, your  
2 power of attorney will end unless you have named a successor  
3 agent. You may also name a second successor agent.

4 This power of attorney becomes effective immediately unless  
5 you state otherwise in the Special Instructions.

6 If you have questions about the power of attorney or the  
7 authority you are granting to your agent, you should seek legal  
8 advice before signing this form.

9

10 DESIGNATION OF AGENT

11 I \_\_\_\_\_ name the following person  
12 (Name of Principal)  
13 as my agent:

14

15 Name of Agent:

16

17 Agent's Address:

18

19 Agent's Telephone Number:

20

21

22 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)



1           If my agent is unable or unwilling to act for me, I name as  
2 my successor agent:

3

4           Name of Successor Agent:

5

\_\_\_\_\_

6           Successor Agent's Address:

7

\_\_\_\_\_

8           Successor Agent's Telephone Number:

9

\_\_\_\_\_

10

11           If my successor agent is unable or unwilling to act for me,  
12 I name as my second successor agent:

13

14           Name of Second Successor Agent:

15

\_\_\_\_\_

16           Second Successor Agent's Address:

17

\_\_\_\_\_

18           Second Successor Agent's Telephone Number:

19

\_\_\_\_\_

20

21           GRANT OF GENERAL AUTHORITY



1 I grant my agent and any successor agent general authority  
2 to act for me with respect to the following subjects as defined  
3 in the Uniform Power of Attorney Act in chapter , Hawaii  
4 Revised Statutes.

5  
6 (INITIAL each subject you want to include in the agent's  
7 general authority. If you wish to grant general authority over  
8 all of the subjects you may initial "All Preceding Subjects"  
9 instead of initialing each subject.)

10

- 11  Real Property
- 12  Tangible Personal Property
- 13  Stocks and Bonds
- 14  Commodities and Options
- 15  Banks and Other Financial Institutions
- 16  Operation of Entity or Business
- 17  Insurance and Annuities
- 18  Estates, Trusts, and Other Beneficial Interests
- 19  Claims and Litigation
- 20  Personal and Family Maintenance
- 21  Benefits from Governmental Programs or Civil or
- 22 Military Service



- 1                    Retirement Plans
- 2                    Taxes
- 3                    Gifts
- 4                    All Preceding Subjects

5

6            GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

7            My agent MAY NOT do any of the following specific acts for  
8 me UNLESS I have INITIALED the specific authority listed below:

9

10            (CAUTION: Granting any of the following will give your  
11 agent the authority to take actions that could significantly  
12 reduce your property or change how your property is distributed  
13 at your death. INITIAL ONLY the specific authority you WANT to  
14 give your agent.)

15

16                    Create, amend, revoke, or terminate an inter  
17 vivos trust

18                    Make a gift, subject to the limitations of the  
19 Uniform Power of Attorney Act under section

20                            -47, Hawaii Revised Statutes, and any special  
21 instructions in this power of attorney

22                    Create or change rights of survivorship



- 1           ( )        Create or change a beneficiary designation
- 2           ( )        Authorize another person to exercise the
- 3                      authority granted under this power of attorney
- 4           ( )        Waive the principal's right to be a beneficiary
- 5                      of a joint and survivor annuity, including a
- 6                      survivor benefit under a retirement plan
- 7           ( )        Exercise fiduciary powers that the principal has
- 8                      authority to delegate

9

10           LIMITATION ON AGENT'S AUTHORITY

11           An agent that is not my ancestor, spouse, or descendant MAY

12 NOT use my property to benefit the agent or a person to whom the

13 agent owes an obligation of support unless I have included that

14 authority in the Special Instructions.

15

16           SPECIAL INSTRUCTIONS (OPTIONAL)

17           You may give special instructions on the following lines:

18

\_\_\_\_\_

19

\_\_\_\_\_

20

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EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator or guardian of my estate:

\_\_\_\_\_

Nominee's Address:

\_\_\_\_\_

Nominee's Telephone Number:

\_\_\_\_\_

Name of Nominee for guardian of my person:

\_\_\_\_\_

Nominee's Address:

\_\_\_\_\_

1 Nominee's Telephone Number:

2 \_\_\_\_\_

3

4 RELIANCE ON THIS POWER OF ATTORNEY

5 Any person, including my agent, may rely upon the validity  
6 of this power of attorney or a copy of it unless that person  
7 knows it has terminated or is invalid.

8

9 SIGNATURE AND ACKNOWLEDGMENT

10 \_\_\_\_\_

11 Your Signature

Date

12 \_\_\_\_\_

13 Your Name Printed

14 \_\_\_\_\_

15 Your Address

16 \_\_\_\_\_

17 Your Telephone Number

18

19 State of \_\_\_\_\_

20 County of \_\_\_\_\_

21

22 This document was acknowledged before me on





1 \_\_\_\_\_,

2 (Date)

3 by \_\_\_\_\_

4 (Name of Principal)

5

6 \_\_\_\_\_ (Seal, if any)

7 Signature of Notary

8

9 My commission expires: \_\_\_\_\_

10

11 This document prepared by:

12

13

14

15 IMPORTANT INFORMATION FOR AGENT

16 Agent's Duties

17 When you accept the authority granted under this power of  
18 attorney, a special legal relationship is created between you  
19 and the principal. This relationship imposes upon you legal  
20 duties that continue until you resign or the power of attorney  
21 is terminated or revoked. You must:



1 (1) Do what you know the principal reasonably expects you  
2 to do with the principal's property or, if you do not  
3 know the principal's expectations, act in the  
4 principal's best interest;

5 (2) Act in good faith;

6 (3) Do nothing beyond the authority granted in this power  
7 of attorney; and

8 (4) Disclose your identity as an agent whenever you act  
9 for the principal by writing or printing the name of  
10 the principal and signing your own name as "agent" in  
11 the following manner:

12

13 (Principal's Name) by (Your Signature) as Agent

14 Unless the Special Instructions in this power of attorney  
15 state otherwise, you must also:

16 (1) Act loyally for the principal's benefit;

17 (2) Avoid conflicts that would impair your ability to act  
18 in the principal's best interest;

19 (3) Act with care, competence, and diligence;

20 (4) Keep a record of all receipts, disbursements, and  
21 transactions made on behalf of the principal;



- 1           (5) Cooperate with any person that has authority to make  
2           health care decisions for the principal to do what you  
3           know the principal reasonably expects or, if you do  
4           not know the principal's expectations, to act in the  
5           principal's best interest; and
- 6           (6) Attempt to preserve the principal's estate plan if you  
7           know the plan and preserving the plan is consistent  
8           with the principal's best interest.

9

## 10           Termination of Agent's Authority

11           You must stop acting on behalf of the principal if you  
12           learn of any event that terminates this power of attorney or  
13           your authority under this power of attorney. Events that  
14           terminate a power of attorney or your authority to act under a  
15           power of attorney include:

- 16           (1) Death of the principal;
- 17           (2) The principal's revocation of the power of attorney or  
18           your authority;
- 19           (3) The occurrence of a termination event stated in the  
20           power of attorney;
- 21           (4) The purpose of the power of attorney is fully  
22           accomplished; or



1 (5) If you are married to the principal, a legal action is  
 2 filed with a court to end your marriage, or for your  
 3 legal separation, unless the Special Instructions in  
 4 this power of attorney state that such an action will  
 5 not terminate your authority.

6  
 7 Liability of Agent

8 The meaning of the authority granted to you is defined in  
 9 the Uniform Power of Attorney Act, in chapter , Hawaii  
 10 Revised Statutes. If you violate the Uniform Power of Attorney  
 11 Act in chapter , Hawaii Revised Statutes, or act outside  
 12 the authority granted, you may be liable for any damages caused  
 13 by your violation.

14 If there is anything about this document or your duties  
 15 that you do not understand, you should seek legal advice.

16 § -52 Agent's certification. The following optional  
 17 form may be used by an agent to certify facts concerning a power  
 18 of attorney.

19 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF  
 20 ATTORNEY AND AGENT'S AUTHORITY

21  
 22 State of \_\_\_\_\_



1 County of \_\_\_\_\_

2

3 I, \_\_\_\_\_ (Name of

4 Agent), certify under penalty of perjury that

5 \_\_\_\_\_ (Name of Principal)

6 granted me authority as an agent or successor agent in a power

7 of attorney dated \_\_\_\_\_.

8

9 I further certify that to my knowledge:

10 (1) The Principal is alive and has not revoked the Power  
11 of Attorney or my authority to act under the Power of  
12 Attorney and the Power of Attorney and my authority to  
13 act under the Power of Attorney have not terminated;

14 (2) If the Power of Attorney was drafted to become  
15 effective upon the happening of an event or  
16 contingency, the event or contingency has occurred;

17 (3) If I was named as a successor agent, the prior agent  
18 is no longer able or willing to serve; and

19 (4) \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_



1 (Insert other relevant statements)

2

3 SIGNATURE AND ACKNOWLEDGMENT

4

\_\_\_\_\_

5 Agent's Signature

\_\_\_\_\_ Date

6

\_\_\_\_\_

7 Agent's Name Printed

8

\_\_\_\_\_

9 Agent's Address

10

\_\_\_\_\_

11 Agent's Telephone Number

12

13 This document was acknowledged before me on

14 \_\_\_\_\_,

15 (Date)

16 by \_\_\_\_\_.

17 (Name of Agent)

18

19 \_\_\_\_\_ (Seal, if any)

20 Signature of Notary

21

22 My commission expires: \_\_\_\_\_

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This document prepared by:

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**PART IV. MISCELLANEOUS PROVISIONS**

§ -61 **Uniformity of application and construction.** In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§ -62 **Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, title 15 United States Code section 7003(b).

§ -63 **Effect on existing powers of attorney.** Except as otherwise provided in this chapter, on the effective date of this chapter:



- 1           (1) This chapter shall apply to a power of attorney  
2                   created before, on, or after the effective date of  
3                   this chapter;
- 4           (2) This chapter shall apply to a judicial proceeding  
5                   concerning a power of attorney commenced on or after  
6                   the effective date of this chapter;
- 7           (3) This chapter shall apply to a judicial proceeding  
8                   concerning a power of attorney commenced before the  
9                   effective date of this chapter, unless the court finds  
10                  that application of a provision of this chapter would  
11                  substantially interfere with the effective conduct of  
12                  the judicial proceeding or prejudice the rights of a  
13                  party, in which case that provision shall not apply  
14                  and the superseded law shall apply; and
- 15          (4) An act done before the effective date of this chapter  
16                  shall not be affected by this chapter."

17           SECTION 2. Section 412:4-100, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19           "(b) Other provisions of the laws of this State,  
20 including, but not limited to, chapter 490, the Uniform  
21 Commercial Code, [~~chapter 551D, the Uniform Durable Power of~~  
22 ~~Attorney Act,~~] chapter \_\_\_\_\_, the Uniform Power of Attorney Act,



1 chapter 553A, Uniform Transfers to Minors Act, chapter 556, the  
2 Uniform Fiduciaries Act, chapter 560, the Uniform Probate Code,  
3 and any successor or similar acts shall also be applicable to  
4 deposits in this State. The rights, protections, releases and  
5 discharges of financial institutions with respect to its  
6 depositors or third parties contained in this article and other  
7 applicable laws shall be cumulative."

8 SECTION 3. Section 432E-4, Hawaii Revised Statutes, is  
9 amended by amending subsection (c) to read as follows:

10 "(c) The provider shall discuss with the enrollee and the  
11 enrollee's immediate family both advanced health-care  
12 directives, as provided for in chapter 327E, and durable powers  
13 of attorney in relation to medical treatment [~~as provided for~~  
14 ~~in chapter 327E and section 551D-2.5]~~."

15 SECTION 4. Chapter 551D, Hawaii Revised Statutes, is  
16 repealed.

17 SECTION 5. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Uniform Power of Attorney Act; Authority; Principals; Agents

**Description:**

Establishes the Uniform Power of Attorney Act. Defines the levels of authority granted in a power of attorney to the principal's agent. Requires the agent to act in good faith and within the scope of authority granted in the power of attorney. Provides sample documents to be used to create a statutory form power of attorney. Repeals Chapter 551D, Hawaii Revised Statutes, the Uniform Durable Power of Attorney Act. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

